Supreme Court, U. S.
FILED
AUG 2 1978
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-36

VIRGINIA W. LUCOM,
Petitioner,

vs.

DAVID L. REID, ETC., et al.,
Respondents.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENTS DAVID L. REID and ALLEN C. CLARK

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TABLE OF CONTENTS

Statement of the Case 1

Argument 2

Conclusion 3

Table of Authorities

CASES

Carson v. *City of Ft. Lauderdale*, 293 F.2d 337 (5th Cir. 1961) 3

Dade County v. *Salter*, 194 So.2d 587 (Fla. 1966) 3

Sioux City Bridge Co. v. *Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 3

STATUTES

Florida Statutes—

Sections 194.171(3) and (4) 1, 2

Section 197.016(1) 2

28 U.S.C. 1341 3

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STATEMENT OF THE CASE

Petitioner filed this action in state court to contest a tax assessment. The lower court entered an order denying defendants' motions to dismiss and defendants filed an interlocutory appeal to the Fourth District Court of Appeal. The appellate court reversed for the reason that the allegations of the complaint showed that the petitioner had failed to comply with Sections 194.171(3) and (4), Florida Statutes. The opinion of the Fourth District Court

of Appeal is contained at page 10(a) of petitioner's appendix.

Petitioner then filed a petition for certiorari in the Florida Supreme Court which was denied without opinion.

ARGUMENT

Sections 194.171(3) and (4), Florida Statutes, are set forth on page 6 of the petition for writ of certiorari. The statute requires as a condition precedent to bringing an action for contesting a tax assessment:

> 1. That the taxpayer pay the collector so much of the tax which he admits in good faith to be owing, and
>
> 2. That such taxes be paid before they become delinquent.

Section 197.016(1), Florida Statutes, provides in part:

> "(1) Tax collectors are required to make all collections before April 1 following the year in which the taxes were assessed. All taxes collected shall be delivered forthwith to the governmental unit levying the tax. All unpaid taxes upon real and personal property shall become delinquent on April 1 of the year following the year in which the taxes were assessed. . . ."

As the Fourth District Court of Appeal pointed out in its opinion, the petitioner was complaining of the assessment against her for the year 1974, and that she tendered the taxes she in good faith admitted owing on April 14,

1975. This was of course after the date set by statute of April 1st.

The essence of the holding of the Fourth District Court of Appeal was since petitioner had not complied with the statutes, her action which was brought to contest the tax assessment should have been dismissed by the lower court.

We find it difficult to answer many of petitioner's contentions because they have nothing to do with the issues in this case. Petitioner injects Proposition 13 in California, the ethics of the attorneys involved against petitioner, civil rights, and suggests that real estate taxes are a "burning national issue". Petitioner also mentions another unsuccessful action which she filed in Federal Court which was dismissed and affirmed on appeal. Petitioner claims that Florida does not provide a plain, speedy and efficient remedy within the meaning of 28 U.S.C. 1341. The Fifth Circuit Court of Appeal expressly held that Florida Law does provide the taxpayer with an efficient remedy in *Carson* v. *City of Ft. Lauderdale,* 293 F.2d 337 (5th Cir. 1961). Petitioner claims that Florida does not adhere to the principles set forth by this Court in *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340. This argument is also incorrect. The Florida Supreme Court followed those principles in *Dade County* v. *Salter,* 194 So.2d 587 (Fla. 1966).

CONCLUSION

Plainly and simply this petitioner failed to follow the Florida Statutes and timely tender those taxes which she admitted in good faith to be owing, which is a condition

precedent to bringing an action to contest a tax assessment in Florida. The petition for writ of certiorari should be denied.

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